***COURT NO. 2***

**THE HIGH COURT OF UTTARANCHAL AT NAINITAL.**

Appeal from Order No. 342 of 2003

United India Insurance
Company Ltd.

…. **Appellant.**

Versus

Sri Aswani Rajpal
and others. ….. **Respondents.**

**Coram : Hon'ble P.C. Verma, J.,**
**Hon'ble B.S. Verma, J.**

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 16-8-2003 passed in M.A.C. Case No. 241 of 2002, Sri Aswani Rajpal & another Vs. Mohd. Riyasat & others, by Motor Accident Claims Tribunal/II Addl. District Judge, Dehradun ***(in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.3,13,536/- as compensation along with interest @ 9% per annum, as mentioned in the impugned order, in favour of the claimants – respondents Nos. 1 and 2 under Section 166 of the Act. Aggrieved, the Insurance Company-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that the accident in question was the result of contributory negligence on the part of drivers of the vehicles involved in the accident, and that the quantum of award is exorbitant and the Tribunal has failed to appreciate the evidence on record.

Brief facts of the case are that Deepak Rajpal ***(the deceased)*** has died in a motor accident on 11.10.2002 on Dehradun-Hardwar road due rash and negligent driving of vehicle no. HR 51 H-9682 in an attempt to overtake tractor trolley with the result the deceased sustained grievous injuries on his person and succumbed to

his injures at the spot. He was aged 25 years and was getting income more than Rs. 8,000/- per month, hence the claim petition has been preferred by the dependents and legal heirs of the deceased. The opposite parties have contested the case by filing their separate written statement. O.P. No. 6-the appellant is the insurer of the ill-fated car. It has been asserted by the Insurance Company that the claimants are not legal heirs and dependents of the deceased; that the driver of the vehicle involved in the accident was not holding a valid driving licence. It has been admitted that the car in question was insured with the appellant-O.P.No.6. The appellant has sought permission to defend the case under Section 170 of the Act vide paper no. 25-C. However, the learned Tribunal has passed an order to the effect ***"Permitted"*** vide order dated 9.6.2003.

The Tribunal has framed as many as 4 Issues in the case. Ultimately, the Tribunal has come to the conclusion that the accident in question resulting into grievous injuries and death of the deceased has occurred due to rash and negligent driving by the driver of the ill-fated car No. HR 51 H-9682. It has also been found that the accident was not the result of contributory negligence on the part of driver of tractor trolley, rather it has been held that the tractor trolley was being driven in moderate speed on proper side. It has further been held that the driver of tractor trolley was holding a valid driving licence on the date of accident. The Tribunal has also held that the ill-fated car was duly insured with the appellant, therefore, the appellant is liable to pay compensation. Regarding income of the deceased, it has been found that annual income of the deceased was proved to be Rs. 58,600/- per annum. 1/3$^{rd}$ of it has been deducted towards personal expenses of the deceased and it was found that the loss of dependency comes to Rs. 39,067/- per annum. Since the deceased was unmarried, therefore, the age of the claimants has been considered for use of multiplier. The Tribunal has held that multiplier of 8 can be applied for determination of just compensation. Finally he Tribunal has awarded compensation of

Rs. 3,13,536/- along with interest in favour of the claimant against the insurer-appellant.

We have heard learned counsel for the appellant, Mr. D.S.Patni, as well as learned counsel for the claimant-respondents no. 1 and 2 and have carefully examined the entire material on record including the impugned judgment and award.

Learned counsel for the appellant has submitted before us that the appellant has a right to file the appeal challenging the finding on the point of rash and negligent driving as well as the quantum of compensation because permission under Section 170 of the Act has been granted to the Insurance Company. We have been referred to paper no. 25-C, copy of which has been filed as Annexure-3 in this appeal. In the present case, the appellant-Insurance Company was impleaded as O.P. No.6 before the Tribunal and the driver and owner of the vehicle in question have been impleaded as O.P.No.4 and 5. Both owner and river of the vehicle involved in the accident have contested the claim petition before the Tribunal. Documentary evidence was also led by the owner. However, subsequently they have not put in appearance in the case, which proceeded ex-parte against them. From the scrutiny of the entire record, we find that there was no collusion between the claimants and the owner or driver of the vehicle. It is true that the Insurance Company has moved application before the Tribunal and the same was allowed in the manner “Permitted”. We agree that the appellant can challenge the case on merit.

It has been submitted on behalf of the appellant that in the present case, there was contributory negligence on the part of the drivers of the vehicles involved in the accident, therefore, the finding of the Tribunal is perverse. This contention of the learned counsel is without any basis. In this case, Bobby alias Tarun Kumar has been produced as P.W.2. This witness has given ocular account of the accident. Initially this witness was examined in the witness-box on

10-7-2003. He has state on oath that on 11.10.2002, he was going from Dehradun to Rishikesh in the morning by his car. He was driving his car. This witness had seen the tractor trolley going on slow speed on the left side of the road. In the meantime, one white car came in fast speed and the driver rashly and negligently tried to overtake the trolley thereby the car dashed against the trolley, with the result the said car came on the center of the road. This witness reached there. He found that the person sitting of the left side of the driver had sustained injuries on different part of the body and he died on the spot. This witness has disclosed the number of the car. This witness has categorically stated that the tractor trolley was being driven in slow speed on the left side of the road. This witness was subjected to cross-examination on 14.7.2003 on fresh oath on behalf of the appellant, but nothing material could be elicited to favour the contention of the appellant from such cross-examination. From a perusal from the testimony of this witness, it can safely be inferred that he is an independent witness and no reason has been shown why this witness will involve an innocent person by giving false evidence. The learned counsel for the appellant has submitted that according to this witness, there was darkness, therefore, his evidence is of no avail. It is not the case of the appellant that there was no light in his car or the in the car involved in the accident. No such suggestion has been put to this witness that due to darkness, he was not in a position to see the motor accident. Therefore, the contention of the appellant is not at all tenable. No evidence to the contrary has been led by the appellant in this case. The Tribunal has rightly relied upon the testimony of P.W.2 on the point of rash and negligent driving. We therefore hold that the Tribunal has rightly come to the conclusion that the motor accident resulting into injuries and death of the deceased has occurred due to rash and negligent driving by the driver of the Maruti Car in question.

So far as the contention of the appellant that the amount of compensation allowed by the Tribunal is highly excessive is concerned, the learned counsel for the appellant could not point any

error or infirmity in the impugned judgment and award, so as to lead us to take a different view in the matter. The learned Tribunal has placed reliance about the income of the deceased on the basis of the income tax returns filed by him. From the perusal of the record, we find that the income of the deceased has been mentioned as Rs. 8,000/- per month. P.W.1, Aswani Rajpal, who is the elder brother of the deceased has stated on oath that the deceased used to earn about Rs. 5,000/- per month from the business of traveling. This statement of the witness has not been controverted in his cross-examination. The paper of income tax available on the record (42-C) shows that the annual income of the deceased was mentioned therein as Rs. 58,600/-. This amount is considerably less than that mentioned in the claim petition. In our view, to reckon the just amount of compensation in the present case, the Tribunal has rightly determined the income of the deceased as Rs. 58,600/- per annum. Out of this amount, 1/3$^{rd}$ has been deducted towards personal expenses of the deceased, had he been alive, therefore, the Tribunal has properly worked out the total amount of compensation. Since the deceased was unmarried, the age of the dependents has been taken into consideration for use of multiplier. The total amount of Rs. 3,13,536/- awarded as compensation appears to be just compensation in the present case.

However, so far as grant of interest @ 9% per annum on the compensation amount is concerned, we are of the view that the rate of interest is already on the decline, therefore, in view of the Apex Court judgment in the Case of ***United India Insurance Co.Ltd. etc. etc. Vs Particia Jean Mahajan & Ors, etc. etc. [2002(2) Apex Court Judgment, 100 (S.C.)],*** it will be in the fitness of things to reduce the rate of interest to 8% instead of 9% per annum considering the present trend of rate of interest. To this extent alone, the impugned order shall stand modified. Rest of the findings of the learned Tribunal shall remain undisturbed.

With the observations aforementioned, the appeal is dismissed on merit. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident, Claims Tribunal concerned, for being paid to the claimants.

01-09-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP